

1 Plaintiff did not pay the \$15.00 partial filing fee as directed.
2 But in the meantime, on July 12, 2010, the first amended complaint
3 was dismissed with leave to amend.

4 On August 6, 2010, Plaintiff filed a proposed second amended
5 complaint. Along with the second amended complaint, Plaintiff filed
6 a current trust account statement showing that between April 1, 2010
7 and July 22, 2010, Plaintiff had deposited \$172.89 into his prison
8 trust account and had withdrawn the same amount through purchases of
9 food and other items. He has not used any of this money to pay the
10 partial filing fee as directed by the Court.

11 In *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002), the
12 Ninth Circuit held that the imposition of a partial filing fee is
13 appropriate under 28 U.S.C. § 1915(b)(1), but that a district court
14 may not dismiss an action for failure to pay that fee when the
15 prisoner does not have assets or any means to pay the filing fee.
16 "The plain language of § 1915(b)(4) compels a holding that a district
17 court cannot dismiss an IFP prisoner's case based on his failure to
18 pay the initial fee when his failure to pay is due to the lack of
19 funds available to him when payment is ordered." *Id.*

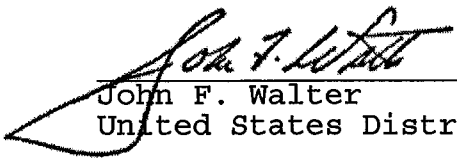
20 Here, Plaintiff has had sufficient funds in his trust account
21 to pay the partial filing fee in the time since payment of the fee
22 was ordered.² Indeed, a deposit of \$150.00 was made into Plaintiff's
23 prison trust account on July 19, 2010. Plaintiff has elected to use
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25 ² Plaintiff contends that much of the money in the trust account
26 is not really his in that he is accepting money for other prisoners to
27 assist them in avoid payment of their restitution fines imposed under
28 state law. For this service, he obtains a percentage of the amount
deposited. While this may be true, the Court is not required to assist
Plaintiff in his money laundering scheme by excusing his failure to pay
the partial filing fee.

1 those funds for purposes other than compliance with the Court's
2 orders. While Plaintiff has the right to use the money as he wishes,
3 his failure to comply with the Court's order in light of his clear
4 ability to do so warrants dismissal of this action.

5 Accordingly, this action is DISMISSED without prejudice.

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7 Dated: August 20, 2010

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9 
10 John F. Walter
11 United States District Judge
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13 Presented by:

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15 Marc L. Goldman
16 United States Magistrate Judge
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